

# **BELLSOUTH OPPOSITION**

**WC DOCKET NO. 02-238**

## **EXHIBIT B**

**PART 1 OF 13**

**ADOPTION AGREEMENT BETWEEN  
SUPRA TELECOMMUNICATIONS AND INFORMATION SYSTEMS, INC.  
AND  
BELL SOUTH TELECOMMUNICATIONS, INC.**

This Adoption Agreement ("Adoption Agreement") is entered into by and between Supra Telecommunications and Information Systems, Inc., ("Supra Telecom") a Florida corporation on behalf of itself, and BellSouth Telecommunications, Inc., ("BellSouth"), a Georgia corporation, having an office at 675 W. Peachtree Street, Atlanta, Georgia, 30375, on behalf of itself and its successors and assigns.

**WHEREAS**, the Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

**WHEREAS**, the Parties entered into an interconnection agreement dated July 15, 2002 ("the Agreement"); and

**WHEREAS**, section 252(i) of the Act requires BellSouth to make available any interconnection, service, or network element provided under an agreement approved by the appropriate state regulatory body to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement; and

**WHEREAS**, Supra Telecom has requested that BellSouth make available the Dispute Resolution Provision from the interconnection agreement between BellSouth and AT&T Communications of the Southern States, Inc. dated October 26, 2001 ("AT&T Agreement");

**NOW, THEREFORE**, in consideration of the promises and mutual covenants of this Adoption Agreement, Supra Telecom and BellSouth hereby agree as follows:

1. The term of this Adoption Agreement shall be from the Effective Date as set forth in the Agreement and shall expire as set forth in the General Terms and Conditions of the AT&T Agreement. For the purposes of determining the expiration date of this Adoption Agreement pursuant to the General Terms and Conditions of the AT&T Agreement, the expiration date shall be October 25, 2004.
2. BellSouth and Supra shall strike Section 16.1 of the General Terms and Conditions of the Agreement in its entirety and replace it with the following language:

16. Dispute Resolution Process

16.1 Except as otherwise stated in this Agreement, i.e. the process for resolving billing disputes as described in Attachment 6, Section 15, the Parties agree that any other dispute that arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, may be taken to the Commission for resolution. The Parties may, by mutual agreement, agree to an alternative dispute resolution mechanism for any dispute, except billing disputes, which shall be resolved as described in Attachment 6, Section 15. Each Party reserves the rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

**IN WITNESS WHEREOF**, the Parties hereto have caused this Adoption Agreement to be executed by their respective duly authorized representatives on the date indicated below.

**Supra Telecommunications &  
Information Systems, Inc**

By: 

Name: DAVID A. NILSON

Title: VP - TECHNOLOGY

Date: 8/20/02

**BellSouth Telecommunications,  
Inc.**

By: 

Name: Gregory R Follenster

Title: Senior Director

Date: 8/19/02



1311 Executive Center Drive, Suite 200  
Tallahassee, FL 32301-5027

Telephone: (850) 402-0510  
Fax: (850) 402-0522  
www.supratelccom.com

August 16, 2002

Mrs. Blanca Bayo, Director  
Division of Commission Clerk and Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

**RE: Docket No. 001305-TP – BellSouth/Supra Follow-Up Interconnection  
Agreement Pursuant to Order No. PSC-02-1096-FOF-TP**

Dear Mrs. Bayo:

Enclosed is the original and seven (7) copies of BellSouth Telecommunications, Inc., (BellSouth) and Supra Telecommunications and Information Systems, Inc.'s (Supra) Follow-Up Interconnection Agreement in Compliance with Order No. PSC-02-1096-FOF-TP, issued on August 9, 2002, in the above captioned docket.

A copy of this letter is enclosed. Please mark it to indicate that the original was filed and return it to me.

Sincerely,

*Brian Chaiken / AHS*

Brian Chaiken  
General Counsel

*Scanned: Vicki  
Micheale*

**CERTIFICATE OF SERVICE****Docket No. 001305-TP**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served via Facsimile, Hand Delivery and/or U.S. Mail this 16<sup>th</sup> day of August, 2002 to the following:

Wayne Knight, Esq.  
Staff Counsel  
Division of Legal Services  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Nancy B. White, Esq.  
James Meza III, Esq.  
T. Michael Twomey, Esq.  
R. Douglas Lackey, Esq.  
E. Earl Edenfield Jr., Esq.  
c/o Nancy H. Sims  
150 South Monroe Street, Suite 400  
Tallahassee, FL 32301  
(850) 222-1201 (voice)  
(850) 222-8640 (fax)

**SUPRA TELECOMMUNICATIONS  
& INFORMATION SYSTEMS, INC.**  
2620 S.W. 27<sup>th</sup> Avenue  
Miami, Florida 33133  
Telephone: (305) 476-4248  
Facsimile: (305) 443-9516

By: Brian Chaiken / AHS  
BRIAN CHAIKEN, ESQ.



2620 S.W. 27th Avenue, Miami, FL 33133

**Olukayode A. Ramos**  
Chairman & CEO  
Email: kayramos@stis.com  
Telephone: (305) 476-4220  
Fax: (305) 476-4282

August 16, 2002

Mr. Greg Follensbee  
Senior Director, Interconnection Services  
BellSouth Telecommunications, Inc.  
675 West Peachtree, N.E.  
Atlanta, Georgia 30375

Re: *Reservation of Rights*

Dear Mr. Follensbee:

Supra is executing this contract because it has been forced to do so by the Florida Public Service Commission ("FPSC") and has been advised that it must do so to obtain further review by the Federal District Court for the Northern District of Florida. Supra executes this contract without waiving any rights; including, but not limited to, having the current interconnection agreement reinstated. Specifically, by executing this contract, Supra does not intend to waive, and does not waive, any and all claims, defenses, or rights to further review in all applicable federal and state trial and appellate courts or agencies, relating to rulings or orders of the FPSC, any other agency, or any court which pertain in any way to this contract, or the prior contract, its terms or any matter which was considered, disputed, or which arose out of any agency or court proceeding regarding this contract. Further, Supra does not intend to waive, and does not waive, any future claims, defenses, or rights to further review with respect to this contract, its execution, or its performance.


This reservation of rights extends specifically to provision 16.1 [Dispute Resolution Process] contained in this agreement. The provision is void as it misstates the law in Florida and the FPSC's findings. The Agenda Conference on this agreement was held on March 5, 2002. On March 12, 2002, BellSouth submitted language to Supra regarding this provision. The BellSouth template employed the word "may." In this March 12<sup>th</sup> version, however, BellSouth changed the term "may" to "shall," making the FPSC's jurisdiction mandatory. The use of the word "shall" is void as against Florida law and the FPSC's findings. The March 12, 2002 BellSouth language with the term "may" included would have been consistent with BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Services, Inc., 278 F.3d 1223 (11<sup>th</sup> Cir. 2002) as well as the FPSC's findings. At most the FPSC found that it has concurrent jurisdiction under Section 364.162, Florida Statutes.

At the March 5, 2002, Agenda Conference the following exchange took place:

Commissioner Baez: "I do have a question for staff, because I want to clarify exactly what the basis of your recommendation is here. If we approve staff . . . our basis is, in essence, that we have authority under state law, under state statute . . ."

Mr. Knight: "Yes, we have authority under state statute."

Commissioner Baez: "What decision are we making by your recommendation as pertains the Eleventh Circuit Case?"



Greg Follensbee  
Senior Director, Interconnection Services  
BellSouth Telecommunications, Inc.  
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Mr. Knight: "... It did not look at Florida state law to see whether or not there was a basis for jurisdiction."

Commissioner Baez: "But it is on some level acknowledgment that certainly the Act doesn't give us the authority."

Mr. Knight: "Correct. That's correct."

Commissioner Baez: "Are we saying that as well?"

Mr. Knight: "Yes, we would be agreeing with that."


Immediately following this exchange, the FPSC voted to find that it did have concurrent jurisdiction under Section 364.162, Florida Statutes, along with state and federal courts as described in BellSouth Telecommunications, Inc. v. MCI Metro Access Transmission Services, Inc., 278 F.3d 1223 (11<sup>th</sup> Cir. 2002).

The present language included in BellSouth's proposed interconnection agreement filed on July 15, 2002, is drafted in such a manner that would allow BellSouth to reasonably argue that *Supra* – by agreeing to provision 16.1 - waived its right to file a breach of contract dispute arising out of or related to the parties interconnection agreement in any state or federal forum.

The language is also drafted in such a manner that is contrary to Florida law. For example, the FPSC does not have jurisdiction to hear disputes involving anti-trust claims. See Section 364.01, Florida Statutes. Neither does the FPSC have jurisdiction to award damages. Southern Bell Telephone and Telegraph Co. v. Mobile America Corp., 291 So.2d 199 (Fla. 1974); Mobile America Corp. v. Southern Bell Telephone and Telegraph Co., 282 So.2d 181, 183 (Fla. 1st DCA 1973). The FPSC has no jurisdiction to hear or award claims for compensatory damages, whether arising from contract, tort or statute, as the award of such damages is a judicial function. Southern Bell, 291 So.2d at 201-202; Florida Power & Light Co. v. Glazer, 671 So.2d 211, 213 (Fla. 3d DCA 1996). As stated by the court in Florida Power & Light, *supra*, the jurisdiction of the FPSC is prospective in nature and thus does not encompass the award of damages for prior misconduct:

"The jurisdiction of the public service commission under the statutory provisions ... has generally been prospective in operation. However, it is not a proper tribunal to decide a controversy after damage has been inflicted. This is a civil action to recover damages for breach of contract or for negligence. The Commission has no jurisdiction to award plaintiff damages or to reimburse plaintiff for its losses. Only a court, in accordance with due process, can constitutionally award damages in a civil action." Florida Power & Light, *supra*, 671 So.2d at 214.

Section 364.162(1), Florida Statutes, did nothing to eliminate any common-law or statutory remedies available against regulated companies such as BellSouth. The court in Florida Power & Light, made this clear in commenting on the absence of legislation



Greg Follensbee  
Senior Director, Interconnection Services  
BellSouth Telecommunications, Inc.  
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replacing any existing remedies stating: "We also note that when the legislature wishes to abolish a cause of action and/or provide substitute remedies by vesting exclusive jurisdiction in an administrative proceeding, it well knows how, and does so quite explicitly." Florida Power & Light, supra, 671 So.2d at 214, n.4. The Florida legislature has not explicitly eliminated Supra's right to seek damages for breach of contract. This position is supported by the case law in Florida, which holds that the FPSC cannot award damages. Forcing Supra to file its claim at the FPSC would extinguish Supra's procedural and constitutional due process rights to damages. Florida Power & Light Co. v. Glazer, 671 So.2d 211, 213 (Fla. 3d DCA 1996); BellSouth Telecommunications, Inc. v. MCImetro Access Transmission Services, Inc., 278 F.3d 1223, 1236 (11<sup>th</sup> Cir. 2002). As such, BellSouth's July 15, 2002, is contrary to Florida law and therefore void. Accordingly, Supra intends to fully exercise all of its rights consistent with Florida and Federal law with respect to any and all claims arising out of and related to this new follow-on agreement. Furthermore, concurrent with the execution of this contract, Supra hereby adopts the dispute resolution provisions of the BellSouth/AT&T Agreement dated October 26, 2001.

*wrong*  
The parties' current interconnection agreement contains an evergreen provision that provides that until a follow-on agreement is approved by the FPSC, BellSouth shall continue to provide services and elements pursuant to the terms, conditions and prices of the current agreement. The effective date of the follow-on agreement is therefore dictated by the date the FPSC decides to issue an Order approving said agreement. Supra's execution of the follow-on agreement is, therefore, only an element of the complete FPSC "act" necessary for the follow-on agreement to become effective. As such, the effective date of the new follow-on agreement shall be the date the FPSC issues an Order approving the new agreement.

Sincerely,

  
Olukayode A. Ramos  
Chairman and CEO

cc: Commissioner Lila Jaber  
Commissioner Michael Palecki  
Commissioner Braulio Baez  
Becket No. 001305-TP





David A. Nilson  
Vice President of Technology  
2620 SW 27<sup>th</sup> Avenue  
Miami, FL 33133-3001  
Phone: (305) 476-4202  
Fax: (305) 443-1078  
Email: dnilson@stis.com

August 16, 2002

**VIA FEDERAL EXPRESS**

Greg Follensbee  
Senior Director  
Interconnection Services  
BellSouth Telecommunications, Inc.  
675 West Peachtree Street, NE  
Room 34S91  
Atlanta, Georgia 30375

**SUBJECT:** Adoption Of Dispute Resolution Provisions

Mr. Follensbee:

In accordance with Section 252 (i) of the Telecommunications Act of 1996 and Title 47 of the Code of Federal Regulations, Section 51.809, Supra Telecom hereby adopts the Dispute Resolution Process as set forth in the BellSouth Telecommunications, Inc. and AT&T Communications of the Southern States, Inc., interconnection agreement for the state of Florida, dated October 26, 2001 ("BellSouth/ATT Agreement").

Paragraph 16.1 of the General Terms and Conditions of the Interconnection Agreement executed by Supra as of August 16, 2002, shall be replaced with the following language from the BellSouth/AT&T Agreement:

• Dispute Resolution Process<sup>1</sup>

Except as otherwise stated in this Agreement, i.e. the process for resolving billing disputes as described in Attachment 6, Section [15], the Parties agree that any other dispute that arises as to the interpretation of any provision of this Agreement or as to the proper implementation of this Agreement, may be taken to the Commission for resolution. The Parties may, by mutual agreement, agree to an alternative dispute resolution mechanism for any

<sup>1</sup> Section 16 of the General Terms and Conditions of the BellSouth/ATT Agreement.

Letter to G. Follensbee  
Adoption of AT&T contract language  
Regarding Dispute Resolution  
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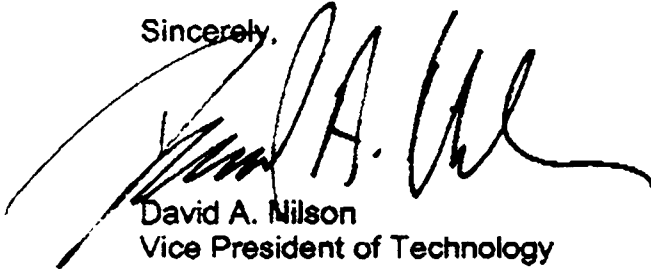
8/16/2002

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dispute, except billing disputes [which] shall be resolved as described in Attachment 6, Section [15]. Each Party reserves the rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

BellSouth shall add this language to the follow-on Interconnection agreement which will be executed by Supra and sent to BellSouth before the FPSC ordered deadline. If BellSouth wishes to add an expiration date for this provision which corresponds to the expiration date of the BellSouth/AT&T Agreement, please feel free to do so. Should you have any questions, please contact the undersigned at 305-476-4202 or e-mail to: [dnilson@stis.com](mailto:dnilson@stis.com).

Sincerely,



David A. Nilson  
Vice President of Technology

cc: Olukayode A. Ramos  
Brian W. Chaiken  
Paul Turner

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

SUPRA TELECOMMUNICATIONS AND  
INFORMATION SYSTEMS, INC.

BELLSOUTH  
TELECOMMUNICATIONS, INC.

\*

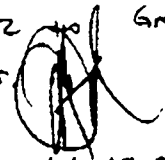
By: 

By: \_\_\_\_\_

Date: 08/16/02

Date: \_\_\_\_\_

\* Subject to accompanying letter of August 16, 2002 to Grey Follansbee regarding reservation of rights and other matters.

  
July 15, 2002

IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

SUPRA TELECOMMUNICATIONS AND  
INFORMATION SYSTEMS, INC.

BELLSOUTH  
TELECOMMUNICATIONS, INC.

By: \_\_\_\_\_

By: Gregory R. Helton

Date: \_\_\_\_\_

Date: July 15, 2002

## **BELLSOUTH® / CLEC Agreement**

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Note: This page is not part of the actual signed contract/amendment, but is present for record keeping purposes only.

## **BELLSOUTH® / CLEC Agreement**

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# **AGREEMENT**

**between**

**BellSouth Telecommunications, Inc.**

**and**

**Supra Telecommunications and Information Systems, Inc.**

**Effective Date: July 15, 2002**

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## **AGREEMENT**

### **PREFACE**

This Agreement, which shall become effective as of the 15th day of July, 2002, is entered into by and between Supra Telecommunications and Information Systems, Inc., ("Supra Telecom") a Florida corporation, having an office at 2620 S.W. 27<sup>th</sup> Avenue, Miami, Florida 33133, its successors and assigns and BellSouth Telecommunications, Inc. ("BellSouth"), a Georgia corporation, having an office at 675 West Peachtree Street, Atlanta, Georgia 30375, its successors and assigns.

### **RECITALS**

WHEREAS, The Telecommunications Act of 1996 (the "Act") was signed into law on February 8, 1996; and

WHEREAS, the Act places certain duties and obligations upon, and grants certain rights to Telecommunications Carriers; and

WHEREAS, BellSouth is an Incumbent Local Exchange Carrier; and

WHEREAS, Supra Telecom is a Telecommunications Carrier and has requested that BellSouth negotiate an Agreement pursuant to the Act,

NOW, THEREFORE, in consideration of the promises and the mutual covenants of this Agreement, Supra Telecom and BellSouth hereby agree as follows:

### **DEFINITIONS and ACRONYMS**

For purposes of this Agreement, certain terms have been defined in the body of the Agreement to encompass meanings that may differ from, or be in addition to, the normal connotation of the defined word. Unless the context clearly indicates otherwise, any term defined or used in the singular shall include the plural. The words "shall" and "will" are used interchangeably throughout this Agreement and the use of either connotes a mandatory requirement. The use of one or the other shall not mean a different degree of right or obligation for either Party. A defined word intended to convey its special meaning is capitalized when used. Other terms that are capitalized, and not defined in this Agreement, shall have the meaning in the Act. For convenience of reference, Attachment 11 provides a list of acronyms used throughout this Agreement.

### **GENERAL TERMS AND CONDITIONS**

**1. Provision of Local Service and Unbundled Network Elements**

- 1.1 This Agreement sets forth the terms, conditions and prices under which BellSouth agrees to provide: (a) telecommunications services that BellSouth currently provides, or may offer hereafter for resale; (b) interconnection of BellSouth's network to Supra Telecom's network including but not limited to reciprocal compensation, if applicable; (c) certain unbundled Network Elements ("Network Elements") and certain combinations of such unbundled Network Elements ("Combinations"); (d) access to poles, rights of way and conduits; and (e) collocation (resale, interconnection, Network Elements and Combinations, access to rights of way, poles and conduits, and collocation shall collectively be referred to as "Services and Elements"). BellSouth may fulfill the requirements imposed upon it by this Agreement by itself or, in the case of directory listings for white pages may cause BellSouth Advertising and Publishing Company ("BAPCO") to take such actions to fulfill BellSouth's responsibilities. This Agreement includes Attachments 1 – 13 and all accompanying Appendices and Exhibits. Unless otherwise provided in this Agreement, BellSouth will perform all of its obligations hereunder throughout its entire service area.
- 1.2 Subject to the requirements of this Agreement, Supra Telecom may, at any time add, relocate or modify any Services and Elements purchased hereunder. Requests for additions or other changes shall be handled pursuant to the process provided in Attachment 10. Terminations of any Services or Elements shall be handled pursuant to Section 3 of the General Terms and Conditions of this Agreement.
- 1.3 BellSouth shall not discontinue Services and Elements provided hereunder without the prior written consent of Supra Telecom. Such consent shall not be unreasonably withheld; provided, however, BellSouth may discontinue any telecommunications service available for resale as long as BellSouth provides Supra Telecom prior written notice of intent to discontinue any such service. BellSouth further agrees to make any such service available to Supra Telecom for resale to Supra Telecom's end users who are subscribers of such services from Supra Telecom until the date BellSouth discontinues any such service for BellSouth's customers. BellSouth also agrees to adopt a reasonable, nondiscriminatory transition schedule for BellSouth or Supra Telecom end users who may be purchasing any such service.
- 1.4 This Agreement may be amended from time to time as mutually agreed in writing between the Parties. The Parties agree that neither Party will take any action to proceed, nor shall either have any obligation to proceed on a requested change unless and until a

modification to this Agreement is signed by authorized representatives of each Party.

**2. Term of Agreement**

2.1 When executed by authorized representatives of BellSouth and Supra Telecom, this Agreement shall become effective as of the Effective Date stated above, and shall expire three (3) years from the Effective Date unless terminated in accordance with the provisions of Section 3.1 of the General Terms and Conditions.

2.2 The Parties agree that by no later than one hundred and eighty (180) days prior to the expiration of this Agreement, the Parties agree to commence negotiations for a subsequent agreement ("Subsequent Agreement") with regard to the terms, conditions and obligations contained in this Agreement.

2.3 If, between one hundred and thirty-five (135) days and one hundred sixty (160) days (pursuant to 47 USC 252 of the Act) of commencing the negotiation referred to in Section 2.2, above, the Parties are unable to satisfactorily negotiate the Subsequent Agreement, either Party may petition the Commission to establish appropriate terms and conditions for those unresolved issues pursuant to 47 U.S.C. 252. If the Commission fails to issue an order setting new terms and conditions prior to the expiration of this Agreement, the terms of this agreement shall continue in effect, on a month-to-month basis, at the same terms, conditions and prices as those in effect at the end of the then-current term, until resolved by the Commission. Upon a final decision by the Commission as to the terms of the Subsequent Agreement, the Parties shall execute a Subsequent Agreement in accordance with the Commission's order, notwithstanding any appeals rights of either Party, and the Parties shall abide by such order and the Subsequent Agreement pending any appeal thereof.

2.4 The Parties must have commenced good faith negotiations within the time period set forth in Sections 2.2 and 2.3 of the Terms and Conditions of this Agreement in order for the Agreement to continue on a month-to-month basis. If such good faith negotiations have not commenced, unless the Parties agree otherwise, the Parties agree to submit the issue of having this Agreement continued on a month-to-month basis to the appropriate Commission. If such a request is made to the Commission, this Agreement will remain in effect on a month-to-month basis until the Commission has ruled.

**3. Termination of Agreement; Transitional Support**

- 3.1 Supra Telecom may terminate any Services and Elements provided under this Agreement upon thirty (30) days written notice to BellSouth unless a different notice period or different conditions are specified for termination of such Services and Elements in this Agreement or pursuant to any applicable tariff, in which event such specific period or conditions shall apply, provided such period or condition is reasonable, nondiscriminatory and narrowly tailored. Where there is no such different notice period or different condition specified, Supra Telecom's liability shall be limited to payment of the amounts due for any terminated Services and Elements provided up to and including the date of termination. Upon termination, BellSouth agrees to cooperate in an orderly and efficient transition to Supra Telecom or another vendor such that the level and quality of the Services and Elements is not degraded and to exercise its best efforts to effect an orderly and efficient transition. Supra Telecom agrees that it may not terminate the entire Agreement pursuant to this section.
- 3.2 If a Party is in breach of a material term or condition of this Agreement ("Defaulting Party"), the other Party shall provide written notice of such breach to the Defaulting Party. The Defaulting Party shall have ten (10) business days from receipt of notice to cure the breach. If the breach is not cured, the Parties shall follow the dispute resolution procedure set forth in Section 16 of the General Terms and Conditions of this Agreement.
4. **Good Faith Performance**
- 4.1 In the performance of their obligations under this Agreement, the Parties shall act in good faith and consistently with the intent of the Act. Where notice, approval or similar action by a Party is permitted or required by any provision of this Agreement, (including, without limitation, the obligation of the Parties to further negotiate the resolution of new or open issues under this Agreement) such action shall not be unreasonably delayed, withheld or conditioned.
5. **Option to Obtain Services and Elements and Combinations Under Other Agreements**
- 5.1 BellSouth shall make available and Supra Telecom may elect to adopt pursuant to 47 U.S.C. § 252 and the FCC rules and regulations regarding such availability any interconnection, service, or network element provided under an agreement approved pursuant to 47 U.S.C. § 252. The adopted interconnection, service, or network element shall apply to the same states as such other agreement and for the identical term of such other agreement.

- 5.2 Supra Telecom may exercise this option by delivering written notice to BellSouth, which may include a proposed amendment to this Agreement to incorporate the prices, terms and conditions, in whole or in part found in the other agreement. The Parties shall amend this Agreement pursuant to this Section within thirty (30) days after the date of such request; provided, however that in the event of a dispute between the Parties regarding the requested adoption, the Parties shall follow the Dispute Resolution Process set forth in this Agreement and the terms of such amendment as ultimately determined through such Dispute Resolution Process shall be deemed effective thirty (30) days following the date of such request.

**6. Responsibility of Each Party**

- 6.1 Each Party is an independent contractor, and has and hereby retains the right to exercise full control of and supervision over its own performance of its obligations under this Agreement and retains full control over the employment, direction, compensation and discharge of all employees assisting in the performance of such obligations. Each Party will be solely responsible for all matters relating to payment of such employees, including compliance with social security taxes, withholding taxes and all other regulations governing such matters. Each Party will be solely responsible for proper handling, storage, transport and disposal at its own expense of all (i) substances or materials that it or its contractors or agents bring to, create or assume control over at Work Locations or, (ii) Waste resulting therefrom or otherwise generated in connection with its or its contractors' or agents' activities at the Work Locations. Subject to the limitations on liability and except as otherwise provided in this Agreement, each Party shall be responsible for (i) its own acts and performance of all obligations imposed by Applicable Law in connection with its activities, legal status and property, real or personal and, (ii) the acts of its own affiliates, employees, agents and contractors during the performance of that Party's obligations hereunder.

**7. Governmental Compliance**

- 7.1 Supra Telecom and BellSouth each shall comply at its own expense with all Applicable Law that relates to (i) its obligations under or activities in connection with this Agreement or (ii) its activities undertaken at, in connection with or relating to Work Locations. Supra Telecom and BellSouth each agree to indemnify, defend (at the other Party's request) and save harmless the other, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses

(including reasonable attorneys' fees) that arise out of or result from (i) its failure or the failure of its contractors or agents to so comply or (ii) any activity, duty or status of it or its contractors or agents that triggers any legal obligation to investigate or remediate environmental contamination. BellSouth, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges (including, but not limited to, space and power), which are necessary for BellSouth to provide the Services and Elements pursuant to this Agreement. Supra Telecom, at its own expense, will be solely responsible for obtaining from governmental authorities, building owners, other carriers, and any other persons or entities, all rights and privileges which are Supra Telecom's obligation as a provider of telecommunications services to its end users pursuant to this Agreement.

## **8. Responsibility For Environmental Contamination**

- 8.1 Supra Telecom shall in no event be liable to BellSouth for any costs whatsoever resulting from the presence or Release of any Environmental Hazard or Hazardous Materials that Supra Telecom did not introduce to the affected Work Location so long as Supra Telecom's actions do not cause or substantially contribute to the release of any Environmental Hazard or Hazardous Materials. BellSouth shall indemnify, defend (at Supra Telecom's request) and hold harmless Supra Telecom, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that arise out of or result from (i) any Environmental Hazard or Hazardous Materials that BellSouth, its contractors or agents introduce to the Work Locations or (ii) the presence or Release of any Environmental Hazard or Hazardous Materials for which BellSouth is responsible under Applicable Law, to the extent the release of any Environmental Hazard or Hazardous Materials is not caused or substantially contributed to by Supra Telecom's actions.
- 8.2 BellSouth shall in no event be liable to Supra Telecom for any costs whatsoever resulting from the presence or Release of any Environmental Hazard or Hazardous Materials that BellSouth did not introduce to the affected Work Location, so long as BellSouth's actions do not cause or substantially contribute to the release of any Environmental Hazards or Hazardous Materials. Supra Telecom shall indemnify, defend (at BellSouth's request) and hold harmless BellSouth, each of its officers, directors and employees from and against any losses, damages, claims, demands, suits, liabilities, fines, penalties and expenses (including reasonable attorneys' fees) that

arise out of or result from (i) any Environmental Hazard or Hazardous Materials that Supra Telecom, its contractors or agents introduce to the Work Locations or (ii) the presence or Release of any Environmental Hazard or Hazardous Materials for which Supra Telecom is responsible under Applicable Law, to the extent the release of any Environmental Hazard or Hazardous Materials is not caused or substantially contributed to by BellSouth's actions.

- 8.3 For purposes of this Section 8, the following terms shall have the following meaning:
- 8.3.1 "Environmental Hazard" means (1) a release, discharge, leak, spill or disposal (collectively referred to hereafter as "release") of HAZARDOUS MATERIALS has occurred on premises or property that is related to the performance of this Agreement and that such affected material or media is demonstrated through applicable or appropriate testing method to require remediation or removal as determined by all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the state, county, city or any other political subdivision in which the release has occurred, and any other political subdivision, agency or instrumentality exercising jurisdiction over the release, including any applicable federal and state case law and common law interpreting any of the foregoing; or (2) any event involving, or exposure to, HAZARDOUS MATERIALS which poses risks to human health, safety or the environment (including, without limitation, indoor or outdoor environment(s) and is regulated under any applicable laws or regulations as described in (1);
- 8.3.2 "Hazardous Materials" means any hazardous or toxic substance, material or waste listed in the United States Department of Transportation HAZARDOUS MATERIALS Table at 49 CFR 172.101; any hazardous substance listed by the Environmental Protection Agency ("EPA") under the Comprehensive Environmental, Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9601, et seq., as amended, and found at 40 CFR Part 302; any hazardous waste listed under the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §§ 6901, et seq., as amended, and found at 40 CFR Part 261; any toxic substance regulated by the Toxic Substances Control Act, 15 U.S.C. §§ 2601, et seq., as amended; any insecticide, fungicide, or rodenticide regulated by the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136, et seq.; and the following specified substances or materials, that may or may not be regulated by the above: (1) asbestos or asbestos-containing materials; (2) petroleum or petroleum-based or derived products or by-products; (3) polychlorinated biphenyls ("PCBs"); and (4) radon.



8.3.3 "Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching, or migration, including without limitation, the movement of Environmental Hazards through or in the air, soil, surface water or groundwater, or any action or omission that causes Environmental Hazards to spread or become more toxic or more expensive to investigate or remediate.

8.3.4 "Waste" means all hazardous and non-hazardous substances and materials which are intended to be discarded, scrapped, or recycled, associated with activities Supra Telecom or BellSouth or their respective contractors or agents perform at Work Locations. It shall be presumed that all substances or materials associated with such activities, that are not in use or incorporated into structures (including without limitation damaged components or tools, leftovers, containers, garbage, scrap, residues or byproducts), except for substances and materials that Supra Telecom, BellSouth or their respective contractors or agents intend to use in their original form in connection with similar activities, are Waste. "Waste" shall not include substances, materials or components incorporated into structures (such as cable routes) even after such components or structure are no longer in current use.

## **9. Regulatory Matters**

9.1 BellSouth shall be responsible for obtaining and keeping in effect all Federal Communications Commission, State Commissions, franchise authority and other regulatory approvals that may be required in connection with the performance of its obligations under this Agreement. Supra Telecom shall be responsible for obtaining and keeping in effect all Federal Communications Commission, State Commission, franchise authority and other regulatory approvals that may be required in connection with its offering of services to Supra Telecom end users contemplated by this Agreement. Supra Telecom shall reasonably cooperate with BellSouth in obtaining and maintaining any required approvals for which BellSouth is responsible, and BellSouth shall reasonably cooperate with Supra Telecom in obtaining and maintaining any required approvals for which Supra Telecom is responsible.

9.2 In the event that BellSouth is required by any governmental authority to file a tariff or make another similar filing ("Filing") in order to implement this Agreement, BellSouth shall (i) consult with Supra Telecom reasonably in advance of such Filing about the form and substance of such Filing, (ii) provide to Supra Telecom its proposed tariff and obtain Supra Telecom's agreement on the form and substance of such Filing, and (iii) take all steps reasonably necessary

to ensure that such Filing imposes obligations upon BellSouth that are no less favorable than those provided in this Agreement and preserves for Supra Telecom the full benefit of the rights otherwise provided in this Agreement. In no event shall BellSouth file any tariff to implement this Agreement that purports to govern Services and Elements that is inconsistent with the rates and other terms and conditions set forth in this Agreement unless such rate or other terms and conditions are more favorable than those set forth in this Agreement.

- 9.3 In the event that any final legislative, regulatory, judicial or other legal action materially affects any material terms of this Agreement, or the ability of Supra Telecom or BellSouth to perform any material terms of this Agreement, Supra Telecom or BellSouth may, on ninety (90) days' written notice (delivered not later than ninety (90) days following the date on which such action has become legally binding and has otherwise become final without regard to, the Parties rights to appeal) require that such terms be renegotiated, and the Parties shall renegotiate in good faith such mutually acceptable new terms as may be required. In the event that such new terms are not renegotiated within ninety (90) days after such notice, the dispute shall follow the dispute resolution procedures set forth in Section 16 of the General Terms and Conditions of this Agreement. To the extent such order involves new or modified rates, the amendment implementing such order shall be deemed effective as to such rates in accordance with the Commission ruling, or in the absence of an ordered effective date, as of the effective date of the order.

**10. DELETED INTENTIONALLY**

**11. Intellectual Property Rights and Indemnification**

- 11.1 No License. No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement. Unless otherwise mutually agreed upon, neither Party shall publish or use the other Party's logo, trademark, service mark, name, language, pictures, or symbols or words from which the Party's name may be reasonably inferred or implied in any product, service, advertisement, promotion, or any other publicity matter, except that nothing in this paragraph shall prohibit a Party from engaging in valid comparative advertising. This paragraph 11.1 shall confer no rights on a Party to the service marks, trademarks and trade names owned or used in conjunction with services by the other Party or its Affiliates, except as expressly permitted by the other Party.

- 11.2 Use of Mark. Both Parties are strictly prohibited from any use, including but not limited to in sales and in marketing or advertising of telecommunications services, of any name, trade name, service mark or trademark (collectively, the "Marks") of the other Party. Notwithstanding the foregoing, the Party receiving a service under this Agreement may, as necessary and as the case may be, make oral and factual references to the trade name "BellSouth" or "Supra" in response to a direct individual inquiry from a particular customer or potential customer regarding the source of the underlying service or the identity of a service technician. In addition, either Party may reference the trade name "BellSouth" or "Supra" in comparative advertising so long as the reference is truthful and factual, does not infringe any intellectual property rights of the other Party and otherwise complies with all applicable laws. Further, Supra Telecom's advertising shall not reference BellSouth or BellSouth's network as the source of service provided by Supra Telecom. Marks of each Party shall include those Marks owned directly by either Party or those Marks which either Party has obtained a legal license to use.
- 11.3 Ownership of Intellectual Property. Any intellectual property which originates from or is developed by a Party shall remain in the exclusive ownership of that Party. Except for limited licenses, to the extent necessary for the Parties to use any facilities or equipment (including software) or to receive any services solely as provided under this Agreement, or as required by applicable law, no patent, copyright, trademark, trade name or other proprietary right is licensed, granted or otherwise transferred by this Agreement.
- 11.4 BellSouth and Supra Telecom (if and to the extent BellSouth uses Supra Telecom facilities or equipment, including software) warrants that each other may use any facilities or equipment, including software, provided hereunder that contains intellectual property owned or controlled by third parties without being subject to any claims of infringement by such third parties. Each Party further warrants that it will not enter into any licensing agreements with respect to any facilities or equipment, including software, that contain provisions that would disqualify the other Party from using or interconnecting with such facilities or equipment, including software, pursuant to the terms of this Agreement. Each Party further warrants that it has not and will not intentionally modify any existing license agreements for any network facilities or equipment, including software, in whole or in part for the purpose of disqualifying the other Party from using or interconnecting with such facilities or equipment, including software, pursuant to the terms of this Agreement. To the extent that providers of facilities or equipment, including software, in either Party's network provide indemnities covering intellectual property liabilities and those

indemnities allow a flow-through of protection to third parties, the indemnified party shall flow those indemnity protections through to the other Party. Finally each Party shall indemnify the other pursuant to the terms of this Agreement, with respect to the other Party's use of intellectual property associated with any new network facilities or equipment, including software, acquisitions.

11.5 BellSouth Indemnification. BellSouth will defend Supra Telecom against claims of infringement arising solely from the use by Supra Telecom of Services and Elements and will indemnify Supra Telecom for any damages awarded based solely on such claims in accordance with this Section 11.

11.5.1 For purposes of Section 11.4 of this Agreement, BellSouth's obligation to indemnify Supra Telecom shall include the obligation to indemnify and hold Supra Telecom harmless from and against any loss, cost, expense or liability arising out of a claim that Supra Telecom's use, pursuant to the terms of this Agreement, of BellSouth's facilities, equipment or software infringes the intellectual property rights of a third party. Should any such facilities, equipment or software, or any portion thereof, provided by BellSouth hereunder become, or, in BellSouth's reasonable opinion, be likely to become the subject of a claim of infringement, or should BellSouth's use thereof be finally enjoined, then BellSouth shall, at its expense, after consultation with Supra Telecom, (i) procure for Supra Telecom the right to continue using such facilities, equipment or software or portion thereof; or (ii) replace or modify such facilities, equipment or software or portion thereof to make it non-infringing, provided, however, that such replacement or modification shall be functionally equivalent to the facilities, equipment or software or portion thereof that is replaced or modified.

11.6 Supra Telecom Indemnification. Supra Telecom (if and only to the extent Supra Telecom provides BellSouth access to its facilities and equipment, including software) will defend BellSouth against claims of infringement arising solely from the use by BellSouth of Supra Telecom facilities or equipment, including software, and to the extent BellSouth uses Supra Telecom facilities or equipment, including software, and will indemnify BellSouth for any damages awarded based solely on such claims in accordance with this Section 11.

11.6.1 For purposes of Section 11.5 of this Agreement, Supra Telecom's obligation to indemnify BellSouth shall include the obligation to indemnify and hold BellSouth harmless from and against any loss, cost, expense or liability arising out of a claim that BellSouth's use, pursuant to the terms of this Agreement, of Supra Telecom facilities or

equipment, including software, infringes the intellectual property rights of a third party. Should any such facilities or equipment, including software, or any portion thereof, provided by Supra Telecom hereunder become, or, in Supra Telecom's reasonable opinion, be likely to become the subject of a claim of infringement, or should Supra Telecom's use thereof be finally enjoined, then Supra Telecom shall, at its expense, after consultation with BellSouth, (i) procure for BellSouth the right to continue using such facilities, equipment or software or portion thereof; or (ii) replace or modify such facilities, equipment or software or portion thereof to make it non-infringing, provided, however, that such replacement or modification shall be functionally equivalent to the facilities, equipment or software or portion thereof that is replaced or modified.

- 11.7 In the event that the provisions of Section 11.4.1 or Section 11.5.1 of this Agreement are unreasonable for the indemnifying party to perform, then the indemnified party shall have the right, in its sole discretion, to waive its indemnification rights under either Section 11.4 or Section 11.5 of this Agreement or to terminate the portion of the Agreement, upon thirty (30) days written notice, solely with respect to the facilities or equipment, including software, provided through the use of the infringing facilities or equipment, including software.
- 11.8 The Party providing access to its facilities or equipment, including software, will inform the other Party of any pending or threatened intellectual property claims of which it is aware and will provide to the other Party periodic and timely updates of such notification, as appropriate, so that the other Party receives maximum notice of any intellectual property risks that it may want to address.
- 11.9 In no event shall either Party be responsible for obtaining any license or right to use agreement associated with any facilities or equipment, including software, by either Party.
- 11.10 **Exception to Obligations.** Both Parties' obligations under this Section shall not apply to the extent the infringement is caused by: (i) modification of the facilities or equipment (including software) by the indemnitee; (ii) use by the indemnitee of the facilities or equipment (including software) in combination with equipment or facilities (including software) not provided or authorized by the indemnitor provided the facilities or equipment (including software) would not be infringing if used alone; (iii) conformance to specifications of the indemnitee which would necessarily result in infringement; or (iv) continued use by the indemnitee of the affected facilities or equipment (including software) after being placed on notice to discontinue use as set forth herein.

11.11 **Exclusive Remedy.** The foregoing shall constitute the sole and exclusive remedies and obligations with respect to a third party claim of intellectual property infringement arising out of the conduct of business under this Agreement.

**12. Audits and Inspections**

12.1 For carrier billing purposes, the Parties have agreed pursuant to Section 12 of Attachment 6, to create a process for pre-bill certification. Until such time as that process is in place, the audit process provided in this Section 12 shall apply.

12.1.1 Subject to BellSouth's reasonable security requirements and except as may be otherwise specifically provided in this Agreement, Supra Telecom may audit BellSouth's books, records and other documents once in each Contract Year for the purpose of evaluating the accuracy of BellSouth's billing and invoicing; such audit to be in accordance with applicable Generally Accepted Auditing Standards. Supra Telecom may request to review any documents or records legitimately related to its billing regardless of whether or not Supra Telecom may have received such documentation or records previously. Supra Telecom may employ other persons or firms for this purpose. Such audit shall take place at a time and place agreed on by the Parties no later than thirty (30) days after notice thereof to BellSouth.

12.1.2 BellSouth shall promptly correct any billing error that is revealed in an audit, including making refund of any overpayment by Supra Telecom in the form of a credit on the invoice for the first full billing cycle after the Parties have agreed upon the accuracy of the audit results. Any Disputes concerning audit results shall be resolved pursuant to the Dispute Resolution procedures described in Section 16 of the General Terms and Conditions.

12.1.3 BellSouth shall cooperate fully in any such audit, providing reasonable access to any and all appropriate BellSouth employees and books, records and other documents reasonably necessary to assess the accuracy of BellSouth's bills.

12.1.4 Supra Telecom may audit BellSouth's books, records and documents more than once during any Contract Year if the previous audit found previously uncorrected net variances or errors in invoices in BellSouth's favor with an aggregate value of at least two percent (2%) of the amounts payable by Supra Telecom for Services and Elements or Combinations provided during the period covered by the audit.

- 12.1.5 Audits shall be at Supra Telecom's expense, subject to reimbursement by BellSouth in the event that an audit finds an adjustment in the charges or in any invoice paid or payable by Supra Telecom hereunder by an amount that is, on an annualized basis, greater than two percent (2%) of the aggregate charges for the Services and Elements during the period covered by the audit.
- 12.1.6 Upon (i) the discovery by BellSouth of overcharges not previously reimbursed to Supra Telecom or (ii) the resolution of disputed audits, BellSouth shall promptly reimburse Supra Telecom the amount of any overpayment times the highest interest rate (in decimal value) which may be levied by law for commercial transactions, compounded daily for the number of days from the date of overpayment to and including the date that payment is actually made. In no event, however, shall interest be assessed on any previously assessed or accrued late payment charges.
- 12.2 Subject to reasonable security requirements, either Party may audit the books, records and other documents of the other for the purpose of evaluating usage pertaining to transport and termination of local traffic. Where such usage data is being transmitted through CABS, the audit shall be conducted in accordance with CABS or other applicable requirements approved by the appropriate State Commission. If data is not being transferred via CABS, either Party may request an audit for such purpose once each Contract Year. Either Party may employ other persons or firms for this purpose. Any such audit shall take place no later than thirty (30) days after notice thereof to the other Party.
- 12.2.1 Either Party shall promptly correct any reported usage error that is revealed in an audit, including making payment of any underpayment after the Parties have agreed upon the accuracy of the audit results. Any Disputes concerning audit results shall be resolved pursuant to the dispute resolution procedures described in Section 16 of the General Terms and Conditions.
- 12.2.2 The Parties shall cooperate fully in any such audit, providing reasonable access to any and all appropriate employees and books, records and other documents reasonably necessary to assess the usage pertaining to transport and terminating of local traffic.
- 13. Performance Measurement**
- 13.1 Performance Measurements, Enforcement Measurements and any applicable enforcement mechanisms shall be as set forth in Attachment 9, incorporated herein by this reference.

- 13.2 BellSouth shall provide telecommunications services pursuant to Attachment 1 to Supra Telecom for resale that are equal in quality, subject to the same conditions, and provided within the same provisioning time intervals that BellSouth provides these services to others, including end users.
- 13.3 BellSouth shall provide, for the facilities and equipment of Supra Telecom, interconnection with BellSouth's network that is at a level of quality that is equal to that which BellSouth provides itself, a subsidiary, an affiliate, or any other third party.
- 13.4 To the extent technically feasible, the quality of a Network Element, as well as the quality of the access to such Network Element, provided to Supra Telecom by BellSouth shall be at least equal in quality to that which BellSouth provides to itself.
- 14. Force Majeure**
- 14.1 Neither Party shall be liable for any delay or failure in performance of any part of this Agreement caused by a Force Majeure condition, including acts of the United States of America or any state, territory or political subdivision thereof, acts of God or a public enemy, fires, floods, disputes, freight embargoes, strikes, labor disputes, earthquakes, volcanic actions, wars, civil disturbances, or other causes beyond the reasonable control of the Party claiming excusable delay or other failure to perform. Force Majeure shall not include acts of any Governmental Authority relating to environmental, health or safety conditions at Work Locations or any other noncompliance with applicable laws, rules and regulations by either Party. If any Force Majeure condition occurs, the Party whose performance fails or is delayed because of such Force Majeure condition shall give prompt notice to the other Party, and upon cessation of such Force Majeure condition, shall give like notice and commence performance hereunder as promptly as reasonably practicable.
- 14.2 Notwithstanding Section 14.1 of this Agreement, no delay or other failure to perform shall be excused pursuant to this Section 14 by the acts or omission of a Party's subcontractors, material persons, suppliers or other third persons providing products or services to such Party unless: (i) there is a Force Majeure condition that affects the performance of said subcontractors, material persons, suppliers or other third persons, (ii) such acts or omissions do not relate to environmental, health or safety conditions at Work Locations and, (iii) unless such delay or failure and the consequences thereof are beyond the control and without the fault or negligence of the Party claiming excusable delay or other failure to perform. Notwithstanding the



foregoing, this Section 14 shall not excuse failure or delays where either Party is required to implement Disaster Recovery plans to avoid such failures and delays in performance.

**15. Certain Federal, State and Local Taxes**

- 15.1 Definition. For purposes of this Section 15, the terms “taxes” and “fees” shall include but not be limited to federal, state or local sales, use, excise, gross receipts or other taxes or tax-like fees of whatever nature and however designated (including tariff surcharges and any fees, charges or other payments, contractual or otherwise, for the use of public streets or rights of way, whether designated as franchise fees or otherwise) imposed on, or sought to be imposed, either of the Parties and measured by the charges or payments, for the services furnished hereunder, excluding any taxes levied on income.
- 15.2 Taxes And Fees Imposed Directly On Either Seller Or Purchaser
- 15.2.1 Taxes and fees imposed on the providing Party, which are neither permitted nor required to be passed on by the providing Party to its Customer, shall be borne and paid by the providing Party.
- 15.2.2 Taxes and fees imposed on the purchasing Party, which are not required to be collected and/or remitted by the providing Party, shall be borne and paid by the purchasing Party.
- 15.3 Taxes And Fees Imposed On Purchaser But Collected And Remitted By Seller
- 15.3.1 Taxes and fees imposed on the purchasing Party shall be borne by the purchasing Party, even if the obligation to collect and/or remit such taxes or fees is placed on the providing Party.
- 15.3.2 To the extent permitted by Applicable Law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, the purchasing Party shall remain liable, to the extent permitted by Applicable law, for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 15.3.3 If the purchasing Party determines that in its opinion any such taxes or fees are not lawfully due, the providing Party shall not bill such taxes or fees to the purchasing Party if the purchasing Party provides written certification, reasonably satisfactory to the providing Party, stating that it is exempt or otherwise not subject to the tax or fee, setting forth the basis therefor, and satisfying any other requirements under Applicable Law. If any authority seeks to collect any such tax or fee that the

purchasing Party has determined and certified not to be lawfully due, or any such tax or fee that was not billed by the providing Party, the purchasing Party may contest the same in good faith, at its own expense. In the event that such contest must be pursued in the name of the providing Party, the providing Party shall permit the purchasing Party to pursue and control the contest in the name of providing Party and providing Party shall have the opportunity to participate fully in the preparation of such contest. In any such contest, the purchasing Party shall promptly furnish the providing Party with copies of all filings in any proceeding, protest, or legal challenge, all rulings issued in connection therewith, and all correspondence between the purchasing Party and the taxing authority.

- 15.3.4 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee, or to avoid the existence of a lien on the assets of the providing Party during the pendency or such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery.
- 15.3.5 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.
- 15.3.6 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereof, or other charges or payable expenses (including reasonable attorney fees) with respect thereto, which are reasonably and necessarily incurred by the providing Party in connection with any claim for or contest of any such tax or fee.
- 15.3.7 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority; such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.
- 15.4 Taxes And Fees Imposed On Seller But Passed On To Purchaser
  - 15.4.1 Taxes and fees imposed on the providing Party, which are permitted or required to be passed on by the providing Party to its Customer, shall be borne by the purchasing Party.

- 15.4.2 To the extent permitted by Applicable Law, any such taxes and/or fees shall be shown as separate items on applicable billing documents between the Parties. Notwithstanding the foregoing, to the extent permitted by Section 15 with respect to the billing of services provided hereunder, the purchasing Party shall remain liable for any such taxes and fees regardless of whether they are actually billed by the providing Party at the time that the respective service is billed.
- 15.4.3 If the purchasing Party disagrees with the providing Party's determination as to the application or basis for any such tax or fee, the Parties shall consult with respect to the imposition and billing of such tax or fee and with respect to whether to contest the imposition of such tax or fee. Notwithstanding the foregoing, the providing Party shall retain responsibility for determining whether and to what extent any such taxes or fees are applicable. The providing Party shall further retain responsibility for determining whether and how to contest the imposition of such taxes or fees, provided, however, the Parties agree to consult in good faith as to such contest and that any such contest undertaken at the request of the purchasing Party shall be at the purchasing Party's expense. In the event that such contest must be pursued in the name of the providing Party, providing Party shall permit purchasing Party to pursue the contest in the name of the providing Party and the providing Party shall have the opportunity to participate fully in the preparation of such contest.
- 15.4.4 If, after consultation in accordance with the preceding Section 15.4.3, the purchasing Party does not agree with the providing Party's final determination as to the application or basis of a particular tax or fee, and if the providing Party, after receipt of a written request by the purchasing Party to contest the imposition of such tax or fee with the imposing authority, fails or refuses to pursue such contest or to allow such contest by the purchasing Party, the purchasing Party may utilize the Dispute Resolution Process outlined in Section 16 of the General Terms and Conditions of this Agreement. Utilization of the Dispute Resolution Process shall not relieve the purchasing party from liability for any tax or fee billed by the providing Party pursuant to this subsection during the pendency of such dispute resolution proceeding. In the event that the purchasing Party prevails in such dispute resolution proceeding, it shall be entitled to a refund in accordance with the final decision therein. Notwithstanding the foregoing, if at any time prior to a final decision in such dispute resolution proceeding the providing Party initiates a contest with the imposing authority with respect to any of the issues involved in such dispute resolution proceeding, the dispute resolution proceeding shall be dismissed as to such common issues and the final decision

rendered in the contest with the imposing authority shall control as to such issues.

15.4.5 In the event that all or any portion of an amount sought to be collected must be paid in order to contest the imposition of any such tax or fee with the imposing authority, or to avoid the existence of a lien on the assets of the providing Party during the pendency of such contest, the purchasing Party shall be responsible for such payment and shall be entitled to the benefit of any refund or recovery

15.4.6 If it is ultimately determined that any additional amount of such a tax or fee is due to the imposing authority, the purchasing Party shall pay such additional amount, including any interest and penalties thereon.

15.4.7 Notwithstanding any provision to the contrary, the purchasing Party shall protect, indemnify and hold harmless (and defend at the purchasing Party's expense) the providing Party from and against any such tax or fee, interest or penalties thereon, or other reasonable charges or payable expenses (including reasonable attorney fees) with respect thereto, which are incurred by the providing Party in connection with any claim for or contest of any such tax or fee which purchasing party elects to contest or which purchasing party provides written authorization for the providing party to undertake on behalf of the purchasing party.

15.4.8 Each Party shall notify the other Party in writing of any assessment, proposed assessment or other claim for any additional amount of such a tax or fee by a taxing authority, such notice to be provided, if possible, at least ten (10) days prior to the date by which a response, protest or other appeal must be filed, but in no event later than thirty (30) days after receipt of such assessment, proposed assessment or claim.

## 15.5 Mutual Cooperation

15.5.1 In any contest of a tax or fee by one Party, the other Party shall cooperate fully by providing records, testimony and such additional information or assistance as may reasonably be necessary to pursue the contest. Further, the other Party shall be reimbursed for any reasonable and necessary out-of-pocket copying and travel expenses incurred in assisting in such contest. Each Party agrees to indemnify and hold harmless the other Party from and against any losses, damages, claims, demands, suits, liabilities, and expenses, including reasonable attorney's fees, that arise out of its failure to perform its obligations under this section.

**16. Dispute Resolution Process**

- 16.1 The appropriate forum for the resolution of disputes arising out of this Agreement is before the Florida Public Service Commission. However, each Party reserves any rights it may have to seek judicial review of any ruling made by the Commission concerning this Agreement.

**17. Notices**

- 17.1 Any notices or other communications required or permitted to be given or delivered under this Agreement shall be in hard-copy writing (unless otherwise specifically provided herein) and shall be sufficiently given if delivered personally or delivered by prepaid overnight express service to the following (unless otherwise specifically required by this Agreement to be delivered to another representative or point of contact):

If to Supra Telecom:

Olukayode Ramos  
Supra Telecom  
2620 SW 27<sup>th</sup> Avenue  
Miami, FL 33133

If to BellSouth:

CLEC Account Team  
9<sup>th</sup> Floor  
600 North 19<sup>th</sup> Street  
Birmingham, AL 35203  
Assistant Vice President  
Supra Telecom Account Team

General Attorney-Commercial Unit  
BellSouth  
Legal Department  
675 W. Peachtree St., Suite 4300  
Atlanta, GA 30375

- 17.2 Either Party may unilaterally change its designated representative and/or address for the receipt of notices by giving seven (7) days prior written notice to the other Party in compliance with this Section. Any notice or other communication shall be deemed given when received.

**18. Confidentiality and Proprietary Information**

- 18.1 For the purposes of this Agreement, "Confidential Information" means confidential or proprietary technical or business Information given by the Discloser to the Recipient. All information which is disclosed by one Party to the other in connection with this Agreement shall automatically be deemed proprietary to the Discloser and subject to this Agreement, unless otherwise confirmed in writing by the Discloser. In addition, by way of example and not limitation, all orders for Services and Elements placed by Supra Telecom pursuant to this Agreement, and information that would constitute Customer Proprietary Network pursuant to the Act and the rules and regulations of the Federal Communications Commission, and recorded usage data as described elsewhere in this Agreement, whether disclosed by Supra Telecom to BellSouth or otherwise acquired by BellSouth in the course of the performance of this Agreement, shall be deemed Confidential Information of Supra Telecom for all purposes under this Agreement.
- 18.2 For a period of five (5) years from the receipt of Confidential Information from the Discloser, except as otherwise specified in this Agreement, the Recipient agrees (a) to use it only for the purpose of performing under this Agreement, (b) to hold it in confidence and disclose it to no one other than its employees having a need to know for the purpose of performing under this Agreement, and (c) to safeguard it from unauthorized use or disclosure with at least the same degree of care with which the Recipient safeguards its own Confidential Information. If the Recipient wishes to disclose the Discloser's Confidential Information to a third Party agent or consultant, the agent or consultant must have executed a written agreement of non-disclosure and non-use comparable in scope to the terms of this Section.
- 18.3 The Recipient may make copies of Confidential Information only as reasonably necessary to perform its obligations under this Agreement. All such copies shall bear the same copyright and proprietary rights notices as are contained on the original.
- 18.4 The Recipient agrees to return all Confidential Information in tangible form received from the Discloser, including any copies made by the Recipient, within thirty (30) days after a written request is delivered to the Recipient, or to destroy all such Confidential Information, except for Confidential Information that the Recipient reasonably requires to perform its obligations under this Agreement. If either Party loses or makes an unauthorized disclosure of the other Party's Confidential Information, it shall notify such other Party immediately and use reasonable efforts to retrieve the lost or wrongfully disclosed information.

- 18.5 The Recipient shall have no obligation to safeguard Confidential Information: (a) which was in the possession of the Recipient free of restriction prior to its receipt from the Discloser; (b) after it becomes publicly known or available through no breach of this Agreement by the Recipient; (c) after it is rightfully acquired by the Recipient free of restrictions on its disclosure; or (d) after it is independently developed by personnel of the Recipient to whom the Discloser's Confidential Information had not been previously disclosed. In addition, either Party shall have the right to disclose Confidential Information to any mediator, arbitrator, state or federal regulatory body, the Department of Justice or any court in the conduct of any mediation, arbitration or approval of this Agreement or in any proceedings concerning the provision of interLATA services by BellSouth that are or may be required by the Act. Additionally, the Recipient may disclose Confidential Information if so required by law, a court, or governmental agency, so long as the Discloser has been notified of the requirement promptly after the Recipient becomes aware of the requirement. In all cases, the Recipient must undertake all lawful measures to avoid disclosing such information until Discloser has had reasonable time to seek and comply with a protective order that covers the Confidential Information to be disclosed.
- 18.6 Each Party's obligations to safeguard Confidential Information disclosed prior to expiration or termination of this Agreement shall survive such expiration or termination.
- 18.7 Except as otherwise expressly provided elsewhere in this Agreement, no license is hereby granted under any patent, trademark, or copyright, nor is any such license implied, solely by virtue of the disclosure of any Confidential Information.
- 18.8 Each Party agrees that the Discloser would be irreparably injured by a breach of this Agreement by the Recipient or its representatives and that the Discloser shall be entitled to seek equitable relief, including injunctive relief and specific performance, in the event of any breach of the provisions of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement, but shall be in addition to all other remedies available at law or in equity.
19. **Branding**
- 19.1 Supra Telecom shall provide the exclusive interface to Supra Telecom end users, except as Supra Telecom shall otherwise specify. In those instances where Supra Telecom requires BellSouth personnel or systems to interface with Supra Telecom end users, such personnel shall identify themselves as representing Supra Telecom, and shall

not identify themselves as representing BellSouth. Except for material provided by Supra Telecom, all forms, business cards or other business materials furnished by BellSouth to Supra Telecom end users shall be subject to Supra Telecom's prior review and approval. In no event shall BellSouth, acting on behalf of Supra Telecom pursuant to this Agreement, provide information to Supra Telecom local service Customers about BellSouth products or services. BellSouth agrees to provide in sufficient time for Supra Telecom to review and provide comments, the methods and procedures, training and approaches, to be used by BellSouth to assure that BellSouth meets Supra Telecom's branding requirement. For installation and repair services, Supra Telecom agrees to provide BellSouth with branded material at no charge for use by BellSouth ("Leave Behind Material"). Supra Telecom will reimburse BellSouth for the reasonable and demonstrable costs BellSouth would otherwise incur as a result of the use of the generic leave behind material. BellSouth will notify Supra Telecom of material supply exhaust in sufficient time that material will always be available. BellSouth will not be liable for any error, mistake or omission, other than intentional acts or omissions or gross negligence, resulting from the requirements to distribute Supra Telecom's Leave Behind Material.

**20. Directory Listings Requirements**

20.1 BellSouth shall make available to Supra Telecom, for Supra Telecom subscribers, non discriminatory access to its telephone number and address directory listings ("Directory Listings"), under the following terms and conditions. In no event shall Supra Telecom subscribers receive Directory Listings that are at less favorable rates, terms or conditions than the rates, terms or conditions that BellSouth provides its subscribers.

20.1.1 BellSouth has delegated certain authority to its affiliate, BellSouth Advertising & Publishing Corporation ("BAPCO"), and has required BAPCO to carry out certain BellSouth obligations imposed by the Act regarding the publication of directories. BellSouth shall maintain the Directory Listings database, which includes Supra Telecom's end users' directory listing information, used by BAPCO in publishing such directories.

20.1.1.1 White Pages Basic Directory Listings. BellSouth shall publish in all BellSouth's white pages Directories at no charge to Supra Telecom or any Supra Telecom Customer one white pages basic Directory Listing for each Supra Telecom Customer for all of such Customer's phone numbers located in the geographic region covered by any white pages Directory. Notwithstanding the foregoing, BellSouth shall not publish



any white pages basic Directory Listing for any Supra Telecom Customer whose Directory Listing has been identified as non-published. Supra Telecom will be required to provide to BellSouth the names, addresses and telephone numbers of all Supra Telecom end users that wish to be omitted from directories.

- 20.1.1.2 **Enhanced White Pages Listings.** Where BellSouth offers to publish, at no charge, in its white pages directory Enhanced White Pages Listings to its retail customers, BellSouth shall publish such listings, at no charge and under the same terms and conditions, for Supra Telecom for its end users. Where BellSouth charges its retail customers for Enhanced White Pages Listings, BellSouth shall publish such listings under the same terms and conditions to Supra Telecom for its Customers at the applicable wholesale discount set forth in Attachment 1.
- 20.1.1.3 **Yellow Pages Basic Directory Listings.** Where BellSouth offers to publish in its Yellow Pages Directory free Yellow Pages listings to its retail end users, BellSouth shall publish such listings, at no charge and under the same terms and conditions to Supra Telecom for its end users. Where BellSouth charges business customers for Yellow Pages basic Directory Listings, BellSouth shall provide one Yellow Pages basic Directory Listing for each Supra Telecom end user, who subscribes to business services, at BellSouth tariffed rates at the applicable wholesale discount set forth in Attachment 1. BellSouth shall not provide "lead" information on Supra Telecom end users to its Yellow Pages directory publishing Affiliate without written permission from Supra Telecom.
- 20.1.2 **Treatment of Directory Listings.** BellSouth shall treat all Directory Listings with the same level of confidentiality that BellSouth accords its own directory listing information, and BellSouth shall limit access to Supra Telecom's end user proprietary confidential directory information to those BellSouth employees who are involved in the preparation of listings. Directory Listings of Supra Telecom Customers shall be alphabetically commingled with the Directory Listings of all other telecommunications carriers, including BellSouth. All Directory Listings published by BellSouth will be as accurate and complete as BellSouth's own listings or those of its Affiliates.
- 20.1.3 **Reserved Rights.** Supra Telecom reserves the right to withhold Directory Listing information from BellSouth if BellSouth charges Supra Telecom a rate for inclusion of Supra Telecom's unlisted numbers in the BellSouth directory databases exceeding the BellSouth retail tariffed charge for unlisted numbers.

20.2            **Directory Listings Database**

20.2.1            **Maintenance.** BellSouth shall maintain a Directory Listings database that shall include the directory listings of BellSouth, Supra Telecom and any other carrier for whom BellSouth has agreed to publish Directory Listings. Supra Telecom and BellSouth shall cooperate to ensure that Directory Listing information relating to Supra Telecom end user is delivered to BellSouth and reflected in such database in a timely and accurate manner (and in no event in a manner that is less timely or accurate than the manner in which BellSouth's Directory Listings database is updated for information relating to BellSouth's end user). Data should be generated from the local service order process and other data feeds for facility-based carriers and should be subject to the same rigorous edits that are applied to BellSouth local service orders; provided, however that such edits shall not affect the provisioning of the services ordered. BellSouth shall use all commercially reasonable efforts to maintain the Directory Listings database in good order. BellSouth shall advise Supra Telecom as soon as possible, but in no event fewer than six (6) months in advance, of any changes in the maintenance of the Directory Listings database or any mechanisms or interfaces, whether industry standard or not, pursuant to which BellSouth will provide Directory Listings to Supra Telecom.

20.2.2            **Third Party Access to Directory Listings Database.** Supra Telecom authorizes BellSouth to provide Directory Listings of Supra Telecom end user to third parties on terms and conditions that comport with the Communications Act and the relevant FCC rules and orders and on the same terms and conditions applicable to the release of Directory Listings of BellSouth end users to third parties. This data shall not be used for any other purpose than publishing a directory.

20.2.3            **Co-operation.** Supra Telecom and BellSouth agree to co-operate in good faith to resolve any issue regarding a Directory Listing raised by an Supra Telecom end user (e.g., publication of a nonpublished Directory Listing, etc.) Upon request by either party, Supra Telecom and BellSouth will in good faith mutually develop a process for escalating and resolving such issues.

**21.            Insurance Requirements**

21.1            At all times during the term of this Agreement, each Party shall maintain, at its own expense, (i) all insurance required by applicable Law including insurance and approved self insurance for statutory workers compensation coverage and (ii) commercial general liability coverage in the amount of not less than ten million dollars

(\$10,000,000) or a combination of commercial general liability and excess/umbrella coverage totaling ten million dollars (\$10,000,000 ). Upon request from the other Party, each Party shall furnish the other Party with certificates of insurance which evidence the minimum levels of insurance set forth herein. Each Party may satisfy all or part of the coverage specified herein through self insurance. Each Party shall give the other Party at least thirty (30) days advance written notice of any cancellation or non-renewal of insurance required by this Section.

**22. Costs and Rates**

22.1 Except as otherwise specifically stated in this Agreement, or any FCC or Commission order or rules, each Party shall be responsible for its costs and expenses in complying with its obligations under this Agreement.

22.2 Where the Commission has established rates for the network elements and services described in this Agreement, rates shall be those established by the Commission. For those network elements and services for which rates have not been established by the Commission, the Parties shall negotiate a rate for such network elements or services. If the Parties cannot agree on a rate, the rate shall be BellSouth's tariff rate. The rate shall not be subject to true up unless the Parties agree otherwise.

**23. Disaster Recovery**

23.1 The Parties will comply with the Disaster Recovery Plan set forth in Attachment 13 of this Agreement.

**24. Miscellaneous**

**24.1 Delegation or Assignment**

24.1.1 BellSouth may not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Supra Telecom which will not be unreasonably withheld. Notwithstanding the foregoing, BellSouth may assign its rights and benefits and delegate its duties and obligations under this Agreement without the consent of Supra Telecom to a 100 percent owned Affiliate company of BellSouth if such Affiliate provides wireline communications, provided that the performance of any such assignee is guaranteed by the assignor. Any prohibited assignment or delegations shall be null and void. In the event any affiliate of Supra Telecom desires to enter into an Interconnection Agreement with BellSouth, such affiliate may negotiate a separate agreement with

BellSouth or adopt any filed and approved Interconnection Agreement pursuant to Section 252(i) of the Act.

**24.2 Subcontracting**

24.2.1 If any Party's obligation under this Agreement is performed by a subcontractor or Affiliate, the Party subcontracting the obligation nevertheless shall remain fully responsible for the performance of this Agreement in accordance with its terms, and shall be solely responsible for payments due its subcontractors or Affiliate. In entering into any contract, subcontract or other agreement for the performance of any obligation under this Agreement, the Party shall not enter into any agreement that it would not enter into if the supplier was performing services directly for said Party. Neither Party will allow its subcontractors to place liens against the property of the other Party or any end user's property. If such a lien is filed by a subcontractor, the Party engaging such subcontractor shall arrange to have such lien removed within ten (10) days.

**24.3 Nonexclusive Remedies**

24.3.1 Except as otherwise expressly provided in this Agreement, each of the remedies provided under this Agreement is cumulative and is in addition to any remedies that may be available at law or in equity.

**24.4 No Third-Party Beneficiaries**

24.4.1 Except as may be specifically set forth in this Agreement, this Agreement does not provide and shall not be construed to provide third Parties with any remedy, claim, liability, reimbursement, cause of action, or other privilege.

**24.5 Referenced Documents**

24.5.1 Whenever any provision of this Agreement refers to a technical reference, technical publication, Supra Telecom Practice, BellSouth Practice, any publication of telecommunications industry administrative or technical standards, or any other document specifically incorporated into this Agreement, it will be deemed to be a reference to the most recent version or edition (including any amendments, supplements, addenda, or successors) of such document that is in effect, and will include the most recent version or edition (including any amendments, supplements, addenda, or successors) of each document incorporated by reference in such a technical reference, technical publication, Supra Telecom Practice, BellSouth Practice, or publication of industry standards (unless Supra

Telecom elects otherwise). Should there be an inconsistency between or among publications or standards, the Parties shall mutually agree upon which requirement shall apply. If the Parties cannot reach agreement, the matter shall be handled pursuant to Section 16 of the General Terms and Conditions of this Agreement. With respect to any guides, references or practices developed by either Party, in the event of a conflict between this Agreement and such guides, references or practices, this Agreement controls.

**24.6           Applicable Law**

24.6.1       To the extent any provisions of this Agreement are subject to the jurisdiction of the FCC, applicable federal rules and regulations shall govern those provisions. To the extent any provisions of this Agreement are subject to the jurisdiction of the state Commission, applicable Commission rules and regulations shall govern those provisions. All other provisions of this Agreement, including general contract provisions, shall be governed by the laws of the State of Georgia.

**24.7           Amendments or Waivers**

24.7.1       Except as otherwise provided in this Agreement, no amendment or waiver of any provision of this Agreement, and no consent to any default under this Agreement, shall be effective unless the same is in writing and signed by an officer of the Party against whom such amendment, waiver or consent is claimed. In addition, no course of dealing or failure of a Party strictly to enforce any term, right or condition of this Agreement shall be construed as a waiver of such term, right or condition. By entering into this Agreement, neither Party waives any rights granted to them pursuant to the Act.

**24.8           Severability**

24.8.1       If any term, condition or provision of this Agreement is held to be invalid or unenforceable for any reason, such invalidity or unenforceability shall not invalidate the entire Agreement, unless such construction would be unreasonable. The Agreement shall be construed as if it did not contain the invalid or unenforceable provision or provisions, and the rights and obligations of each Party shall be construed and enforced accordingly; provided, however, that in the event such invalid or unenforceable provision or provisions are essential elements of this Agreement and substantially impair the rights or obligations of either Party, the Parties shall promptly negotiate a replacement provision or provisions.

24.9           **Entire Agreement**

24.9.1           This Agreement, which shall include the Attachments, Appendices and other documents referenced herein, constitutes the entire Agreement between the Parties concerning the subject matter hereof and supersedes any prior agreements, representations, statements, negotiations, understandings, proposals or undertakings, oral or written, with respect to the subject matter expressly set forth herein.

24.10           **Survival of Obligations**

24.10.1           Any liabilities or obligations of a Party for acts or omissions prior to the cancellation or termination of this Agreement, any obligation of a Party under the provisions regarding indemnification, Confidential Information, limitations on liability, and any other provisions of this Agreement which, by their terms, are contemplated to survive (or to be performed after) termination of this Agreement, shall survive cancellation or termination thereof.

24.11           **Executed in Counterparts**

24.11.1           This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but such counterparts shall together constitute one and the same instrument.

24.12           **Headings of No Force or Effect**

24.12.1           The headings of Articles and Sections of this Agreement are for convenience of reference only, and shall in no way define, modify or restrict the meaning or interpretation of the terms or provisions of this Agreement.

24.13           **Notice of Network Changes**

24.13.1           BellSouth shall comply with the requirements of 47 C.F.R. § 51.325, et seq., regarding notice to Supra Telecom of any network change that will affect Supra Telecom's performance or ability to provide service or that will affect BellSouth's interoperability with Supra Telecom. This section shall be construed in accordance with the obligations contained within 47 C.F.R. § 51.325, et seq.

24.14           **Court Ordered Requests for Call Detail Records and Other Subscriber Information**

24.14.1           To the extent technically feasible, BellSouth maintains call detail records for Supra Telecom end users for limited time periods and can respond to subpoenas and court ordered requests for this information.

BellSouth shall maintain such information for Supra Telecom end users for the same length of time it maintains such information for its own end users.

- 24.14.2 Supra Telecom agrees that BellSouth will respond to subpoenas and court ordered requests delivered directly to BellSouth for the purpose of providing call detail records when the targeted telephone numbers belong to Supra Telecom end users. Billing for such requests will be generated by BellSouth and directed to the law enforcement agency initiating the request.
- 24.14.3 Where BellSouth is providing to Supra Telecom telecommunications services for resale or providing to Supra Telecom the local switching function, then Supra Telecom agrees that in those cases where Supra Telecom receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to Supra Telecom end users, if Supra Telecom does not have the requested information, Supra Telecom will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to BellSouth. Where the request has been forwarded to BellSouth, billing for call detail information will be generated by BellSouth and directed to the law enforcement agency initiating the request.
- 24.14.4 In all other instances, Supra Telecom will provide Supra Telecom end user and/or other customer information that is available to Supra Telecom in response to subpoenas and court orders for their own end user records. When BellSouth receives subpoenas or court ordered requests regarding targeted telephone numbers belonging to Supra Telecom end users, BellSouth will advise the law enforcement agency initiating the request to redirect the subpoena or court ordered request to Supra Telecom.
- 24.15 **Filing of Agreement**
- 24.15.1 Upon execution of this Agreement, it shall be filed with the appropriate state regulatory agency pursuant to the requirements of Section 252 of the Act, and the Parties shall share equally any filing fees therefor. If the regulatory agency imposes any filing or public interest notice fees regarding the filing or approval of the Agreement, Supra Telecom shall be responsible for publishing the required notice and the publication and/or notice costs shall be borne by Supra Telecom. Notwithstanding the foregoing, this Agreement shall not be submitted for approval by the appropriate state regulatory agency unless and until such time as Supra Telecom is duly certified as a local exchange carrier in such state.

24.15.2 BellSouth shall develop the capability to post on its web site any BellSouth interconnection agreement between BellSouth and any third party, and shall post such agreements no later than five days after the approval of such agreement with the Commission. The format of the posted agreements will permit downloading and saving of any posted interconnection agreement.

24.16 **Other Proceedings**

24.16.1 Upon written request by Supra Telecom, BellSouth agrees to negotiate rates, (if appropriate), terms and conditions to incorporate into this Agreement any obligation or commitment regarding interconnection, resale or access to Network Elements made by BellSouth to any state or federal regulatory authority or the U.S. Department of Justice ("Governmental Body") in connection with any merger or regulatory proceeding regarding BellSouth's obligations under the Act, including 47 U.S.C. § 271 thereunder. Any amendment shall incorporate only those terms, obligations and commitments made to the Governmental Body, and any ancillary or related terms which do not negate or impair the terms of the obligation or commitment to the Governmental Body. If the Parties cannot reach an agreement regarding the rates, terms and conditions, either Party may, within sixty (60) days after receipt of the request from Supra Telecom, petition the state regulatory commission for resolution of the issue(s). The language to be negotiated and incorporated within this Agreement will be effective consistent with the effective date of the commitment or obligation made by BellSouth to the Governmental Body or as the Parties may otherwise mutually agree. Supra Telecom's rights pursuant to this Section 24.16.1 shall be cumulative with, and not in lieu of or in limitation of, any other rights provided to Supra Telecom under this Agreement.

25. **Reservation of Rights**

25.1 Execution of the Interconnection Agreement by either Party does not confirm or infer that the executing Party agrees with any decision(s) issued pursuant to the Telecommunications Act of 1996 and the consequences of those decisions on specific language in this Agreement. Neither Party waives its rights to appeal or otherwise challenge any such decision(s) and each Party reserves all of its rights to pursue any and all legal and/or equitable remedies, including appeals of any such decision(s). If such appeals or challenges result in changes in the decision(s), the Parties agree that appropriate modifications to this Agreement will be made promptly to make its terms consistent with those changed decision(s).



IN WITNESS WHEREOF, the Parties have executed this Agreement through their authorized representatives.

SUPRA TELECOMMUNICATIONS AND  
INFORMATION SYSTEMS, INC.

BELLSOUTH  
TELECOMMUNICATIONS, INC.

By: \_\_\_\_\_

By: Gregory R. Tallon

Date: \_\_\_\_\_

Date: July 15, 2002

**Attachment 1**

**Resale**

July 15, 2002

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July 15, 2002